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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1724 OF 2003

Austin William Luis Pinto, aged about 23 years, residing at Khurd Mehal Chawl, Room No.A/1, Mohili Village Sakinaka, Mumbai - 400 072 at present detained at Nashik Road Central Prison, Nashik. ... Petitioner

Versus

1. The Commissioner of Police, Greater Mumbai, Mumbai.

2. The State of Maharashtra,

3. The Superintendent, Thane Central Prison, Thane.

4. The Superintendent, Nashik Road Central Prison, Nashik. ... Respondents

Mr. Nitin Sejpal for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

CORAM: SMT. RANJANA DESAI & A.S. OKA, JJ.

DATED: 10TH SEPTEMBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The petitioner (for convenience, "the detenu") is detained under the order of detention dated 30/9/2003 issued by the Commissioner of Police, Brihan Mumbai, under section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the said Act"). The order of detention, the grounds of

detention and the material in support thereof were served on the detenu on 30/9/2003. In this petition, the detenu has challenged the said detention order.

2. The order of detention is based on a case being C.R. No.119 of 2003 registered at Mulund Police Station and on two in-camera statements of witnesses "A" and "B". Mr. Sejpal, the learned counsel for the petitioner/detenu contended that the first incident does not affect public order and the detaining authority could not have included it in the grounds of detention.

3. The first case is registered on the basis of the complaint lodged by one Ajay Ramdas Joshi, who was at the relevant time, working as a detection officer. On 1/5/2003, at about 8.30 hours, he along with his staff reported for duty as usual. PN 5983 and PC 27268 were sent for patrolling Mulund colony area. When PN 5938 and PC 272268 were on patrolling duty in Mulund colony area and when they reached near a tea stall near Amarnagar Dargah, they noticed the detenu and associates whispering among themselves. When they listened to their discussion carefully, they learnt that the detenu and his associates had hatched a plan to commit an offence of dacoity at "Kamal Art Jewellers" in Mulund colony area and the detenu's associates were waiting for the detenu and other associates. PN 5938 informed PSI Joshi and requested for additional police help. Accordingly, at about 16.20 hours, the police team reached near Amar Nagar Dargah

Road. The police team left its vehicles at some distance from Kamal Art Jewellers and walked towards the jewellers shop separately by forming two groups. PN 5938 pointed out two associates of the detenu and informed that they were the people discussing about committing dacoity and they were waiting for the detenu and his other associates. API Kale, who was in the team informed and asked the other members to take positions in different directions and places around Kamal Art Jewellers. At about 17.30 hours one autorikshaw arrived there from Mulund colony side and halted near those two associates. The detenu and his two associates came out from the autorikshaw and the autorikshaw left the place. The detenu and two of his associates went near the other two associates, who were waiting for the detenu. They were discussing something amongst themselves. After few minutes, the detenu and his four associates started walking towards Kamal Art Jewellers. Immediately both the police team rushed towards the detenu and his associates and surrounded them. The detenu and his associates sensed the police presence and started running away. The police team chased and caught the detenu and his three associates. However, one associate of the detenu managed to escape. The detenu and three of his associates were searched in the presence of two panchas on the spot. The detenu was found in possession of a country made revolver loaded with one live catridge and one live catridge in his pant pocket. Weapons were also recovered from his associates. On the basis of this, a

case under sections 399, 402 of IPC read with sections 3, 25 of Indian Arms Act read with section 37(A) of the Bombay Police Act came to be registered at the Mulund Police Station vide C.R. No.119 of 2003 against the detenu and his associates.

4. It is stated in the grounds of detention that the detenu and his associates admitted that they belonged to Chotta Rajan Gang. During the course of investigation, statements of five persons from the police force were recorded. The detenu was ordered to be released on bail on 2/7/2003 and he availed of the bail facility on 5/7/2003.

5. We are inclined to agree with the learned counsel for the petitioner/detenu that this incident cannot affect the public order. The detenu and his associates were nabbed even before the dacoity was committed. There is no material on record to indicate that on account of this incident a reign of terror was created in the vicinity and the even tempo of life of the society was disturbed. The detaining authority has referred to five statements. Significantly, they are statements of people, who belong to the police force. Admittedly, there was no material before the detaining authority in the form of statements of independent persons stating that on account of this incident, there was a reign of terror created in the vicinity and the even tempo of life of the society was disturbed. It is true that the detaining authority has

stated that the detenu belongs to Chotta Rajan Gang but barring a reference to this in the remand application, there is no material to bear out this case also. The learned APP was unable to point out any other material in support of this statement. In our opinion, the detaining authority erred in relying on this incident as one affecting public order.

6. It appears that after the detenu was released on bail in C.R. No.119 of 2003 on 5/7/2003, the police recorded two in-camera statements. Statement of "A" came to be recorded on 12/7/2003 and statement of "B" came to be recorded on 14/7/2003. Both of them referred to the incidents which had taken place in April, 2003 where the detenu and his associates are alleged to have been involved. Those incidents pertain to demands of hafta by giving threats at the point of deadly weapons. Charge sheet in CR No.119 of 2003 came to be filed on 11/8/2003.

7. Mr. Sejpal, the learned counsel appearing for the petitioner/detenu, relying on a decision of the Supreme Court in **Pradeep Nilkanth Paturkar v. S. Ramamurthi & Ors. 1993 SCC (Cri) 392**, contended that there is unexplained and inordinate delay in issuing the detention order and on that count the detention order should be set aside. He contended that in the first case, the incident had taken place on 1/5/2003 and the detenu was nabbed immediately on the very day. He was released on bail on 2/7/2003 and he availed the bail facility on 5/7/2003.

Confidential enquiry was started by the police. Thereafter statements of witnesses "A" and "B" were recorded on 12/7/2003 and 14/7/2003 respectively in which they spoke about the incidents which had taken place in April 2003. Thereafter proposal was submitted on 26/7/2003 and the detention order came to be issued on 30/9/2003. The learned counsel submitted that the in-camera statements were merely recorded to fill in the gap between 1/5/2003 and the date of submission of the proposal i.e. 26/7/2003.

8. In **Pradeep Nilkanth Paturkar's case (supra)** the Supreme Court was dealing with some what similar fact situation. In that case, the detention order was passed after five months and eight days from the date of registration of the last case and more than four months from submission of the proposal, and the in-camera statements of witnesses were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him. Those statements were very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the said Act. In that case, while setting aside the detention order on the ground of delay, the Supreme Court expressed its anguish about the fact that the statements of the witnesses were recorded only after the detenu became successful in getting the bail. Here also, the statements of witnesses have been recorded after the

detenu availed of the bail facility on 2/7/2003. There is no explanation as to why the in-camera statements were not recorded even though the detenu was in custody from 1/5/2003 to 2/7/2003. Considering the fact that an incident clearly affecting the law and order has been cited as the first ground, in the facts of this case, in our opinion, these delayed statements have an adverse impact on the detention order. Moreover, we find that the proposal was submitted on 26/7/2003 and even the period between 26/7/2003 and 30/9/2003 has also not been properly explained. The cumulative effect of this is that the detention order is also vitiated on account of delay in issuing of the order. In the result, therefore, the impugned order will have to be set aside. Hence, the following order.

O R D E R

"The impugned order of detention dated 30/9/2003 issued by the Commissioner of Police, Brihan Mumbai, under sub-section (2) of section 3 of the MPDA Act against the petitioner-detenu Mr. Austin William Luis Pinto is quashed and set aside.

The petitioner-detenu Mr. Austin William Luis Pinto is directed to be released forthwith unless otherwise required in any other case.

All concerned to act on ordinary copy of this order duly authenticated by the Personal Assistant/Sheristedar of this court.

Petition is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)